

## **MEETING #10 March 3**

At a Public Hearing of the Madison County Board of Supervisors and the Madison County Planning Commission on March 3, 2010 at 7:30 p.m. in the Madison County Administrative Center Auditorium:

PRESENT: Eddie Dean, Chairman, Eddie Dean  
James L. Arrington, Vice-Chairman  
J. Dave Allen, Member  
Jerry J. Butler, Member  
Pete J. Elliott, Member  
V. R. Shackelford, III, County Attorney  
Lisa Robertson, County Administrator

Chairman, Eddie Dean called the meeting to order and stated that a quorum was present.

Chairman, Eddie Dean stated the purpose of tonight's Public Hearing is to discuss the proposed Ordinance to Amend the Definition of a Kennel in Article 29-104 of the Madison County Zoning Ordinance (#2010-2).

Chairman, Eddie Dean asked that all comments be held to a minimum of three (3) minutes and that all those who wish to speak would please state their name and address as they approach the podium in order to have comments recorded; he also stated that he will "raise his hand" when comments have reached 2.5 minutes to let each speaker know they have about thirty seconds (30) to complete their comments.

Chairman, Eddie Dean reminded those in attendance that tonight's meeting is a "Public Hearing for the Madison County Board of Supervisors and the Madison County Planning Commission, so all remarks should be addressed to both the aforementioned entities" and tonight's session "is not a confrontation between individuals, but an opportunity to inform both the Madison County Board of Supervisors and the Madison County Planning Commission of the citizen's feelings."

V. R. Shackelford, III, County Attorney, provided an overview of how tonight's proposed amendment came about and the various research that was implemented by the Madison County Planning Commission's Sub-Committee in seeing how the State Code and other localities refer to the definition of a "Kennel" – he stated

the Sub-Committee returned to the Madison County Planning Commission with the recommendation that tonight's Amendment be discussed in an open Public Hearing.

V. R. Shackelford, III, County Attorney, stated it was recommended that the "definition of a 'kennel' in the County's Zoning Ordinance remain the same with the exception of the final sentence contained in the document (i.e. delete the wording, "Home litters kept less than six (6) months are not included") as it was felt the wording was somewhat confusing.

V. R. Shackelford, III, County Attorney, advised the aforementioned recommendation was brought to the Madison County Planning Commission, which, in turn voted "9-1" and forwarded a recommendation the denoted change to the Madison County Board of Supervisors to be discussed in a Public Hearing session.

V. R. Shackelford, III, County Attorney, also explained the procedures involved with proposed amendments to County Ordinances, as well as the roles the Madison County Board of Supervisors and the Madison County Planning Commission have in the process.

Additionally, V. R. Shackelford, III, County Attorney, stressed the matter being discussed tonight is a "zoning issue" and not an "animal control issue" – he stated the County does have an Animal Control Ordinance which was also conducted by way of a Public Hearing and updated in October 2006.

V. R. Shackelford, III, County Attorney, also suggested that when reading the proposed definition, please understand that the Zoning Ordinance governs "the land use" and not "dangerous dogs" (i.e. this issue is governed by the Animal Control Ordinance.

Additionally, V. R. Shackelford, III, County Attorney, stated the regulation of animals is considered to be a land issue in Madison County and it is hoped the County can come up with a definition that will be clear and assist neighbors in resolving controversies and also assist in making land use issues clear.

In closing, V. R. Shackelford, III, County Attorney, read the existing definition of a "kennel" (Article 20-104) as being "A place designed or prepared to house, brood, breed, handle or otherwise keep or care for dogs or cats for sale or in return

for compensation” (tonight’s proposal is to eliminate the last sentence that pertains to “Home litters kept less than (6) months are not included”).

Chairman, Eddie Dean advised the Madison County Planning Commission will convene once the Public Hearing has concluded and “may or may not” take action on tonight’s proposal.

Chairman, Eddie Dean advised the Madison County Board of Supervisors will also reconvene, and stated it has been the Board’s policy that when hearing proposed Ordinances (unless it’s an emergency), the Board generally does not take action on the same night.

Chairman, Eddie Dean stated he did not perceive tonight’s proposal an “emergency situation”, therefore, action by the Madison County Board of Supervisors will probably not occur until the March Regular Meeting scheduled for Tuesday, March 9, 2010.

Chairman, Eddie Dean then opened the Public Hearing for comments from the floor.

Ralph Nicholson of Reva, was present and stated that he is admirably opposed to tonight’s amendment proposal because he doesn’t feel it is necessary and the Zoning Ordinance doesn’t contain the word “commercial” and if read one can see the intent; he also stated the last sentence that refers to “home litters” does make a clear distinction between a “home operation” rather than a “commercial operations” – he also feels the County’s Zoning Ordinance shouldn’t be changed simply because of a dispute among citizens; if a “commercial operation” requires a special use permit in order to operate, he feels it is up to the County and the Zoning Administrator to be responsible for enforcing the Ordinance and an investigation should be done if an individual is actively operating a commercial kennel and the individual should be forced to come in line in order to abide by the Zoning Ordinance guidelines.

Pam Shifflett of Rochelle was present and stated she has been a registered voter in Madison County for the past eight (8) years; she expressed her opposition to the amendment proposal; she also stated she is a member of the American Kennel Club in Albemarle County and advised that she took an oath to abide by the guidelines in place by the American Kennel Club; she stated that she breeds Cocker Spaniels and considers

herself a responsible breeder; she stated of the five (5) litters of puppies she has had, she only sold two (2), kept one (1) and returned (2) of the puppies away; she stated her operation is not one of profit but done for the love of the breed. She also feels that by removing the final sentence contained in the existing Zoning Ordinance places restrictions on individuals who only have a few litters a year and limits the breeders ability to devote the time needed in order to assess whether a dog will possess the qualities needed to be a show dog; she also advised if a dog is sold as a show dog and it doesn't measure up, the dog is returned to her and she refuses to let any of her dogs be sent to an animal shelter.

Peggy Frye of Cook Mountain Drive was present and stated she breeds Airedales every one (1) to two (2) years – dogs are only kept for six (6) months and have only placed one (1) dog in the past five (5) years; she feels tonight's proposal shouldn't apply to the operation that she currently has in place.

Bonnie Dixon of Criglersville was present and stated she has had ongoing problems in her area and petitioned the Madison County Planning Commission in July 2009 to address this issue; she provided a brief overview of her ordeal with the dogs at Thunder Ridge Kennel and stated that visitors to her home were chased and terrorized by these dogs which were not puppies but powerful and aggressive adult animals who constantly demonstrate territorial behaviors that have also resulted in many dangerous situations at her home (long-standing); she has made many reports over the past ten (10) years and also has secondhand knowledge of others who have done the same; during a court appearance, she was advised there are currently no laws in place for Madison County, Virginia that prevent dogs from roaming at large, but the Judge made a verbal request that the dogs from Thunder Ridge Kennel be kept off their (Dixon) property, which has not been done thus far; instead, the dogs roam up to her porch and up/down the river. She stated the owner(s) have not kept their dogs from coming onto her property (i.e. porch) and up/down the river stream next to their home. After a Virginia woman was killed by dogs in 2005, laws were changed at the state level to ensure that owner's failing to protect others from their dogs would be held accountable and face consequences. In addition, she had hoped that more safeguards would follow to protect individuals from dog attacks – if an individual is mauled and attacked and survives, how

can they identify which dog was at fault when the incident involved several dogs of the same breed. In addition, she stated her request from July 2009 asked that the Board of Supervisors re-visit this issue, after which time she did some checking at the Zoning Office and was advised that a special use permit is required for commercial kennels located in agriculture/conservation zones (Criglersville is zoned A1-C1); she also learned that it is a misdemeanor and a penalty for a commercial owner who fails to meet the aforementioned requirement and was also advised (by the County Administrator) that such a permit had not been issued for Thunder Ridge Kennel. She questioned how these dogs (at Thunder Ridge Kennel) can be considered as ‘pets, a home litter, and a commercial kennel [that advertises dogs for sale by appointment only]’ all at the same time, therefore, she feels the issues involve: 1) protecting the safety of neighbors from dangerous dogs who are allowed to enter neighboring property (ies); and 2) abiding by the existing Ordinance regarding commercial kennels in Madison County. She stated at the Board’s meeting in July she requested a review of the issue and was invited by the County Attorney and two (2) Board members to work with them to find a better solution to the problem. In closing, she proposed that dog owners should be required to obtain a special use permit if neighboring property owners register complaints with the County – she doesn’t understand why making the distinction between a “commercial kennel” and a “home litter” should make any difference; however, if there are no complaints, then there would be no reason to distinguish between the two.

Warren Cummings of John Tucker Road was present and stated “my wife and I are cat people” and he doesn’t understand how tonight’s proposal can do anything to promote safety and general health/welfare in Madison County, Virginia; also, he noted it is his understanding that this entire issue came about as a result of ‘dog behavior’ - however the definition of a “kennel” includes cats so he is opposed to tonight’s proposal as he sees cats being “swept up as fur balls.”

Lindsay Shifflett of Rochelle was present and stated that although she is only 15 years old and unable to vote, she does have a dog that has competed in shows for the past several years; she has worked with professional handlers and was invited to compete in the Westminster Dog Show during the past year in New York (placed in the top twenty out of 125 handlers) – also was noted as a junior handler in 2008 with various

breeds; advised her experience in dog showing has taught her the importance of competitive standards and she has also learned (from her mother) the importance of responsible breeding practices, as it is a lifelong commitment. In closing, she feels the proposed Ordinance will penalize responsible breeders and asked the Board not to move forward with doing this.

Bob Kane of Brightwood was present and stated he has had hunting dogs for over thirty-five (35) years and a member of the Virginia Hunting Dog Owners Association for the past twenty (20) years; he has also spent a lot of time in Richmond, Virginia pursuing this same interest; he stated he has all the sympathy in the world for Frank and Bonnie Dixon and he cannot imagine living in the situation they have found themselves in for the past ten (10) years; he stated that his dogs are well trained and feels the issue that is being raised tonight is an animal control problem.

Chairman, Eddie Dean asked that citizens please hold off on applause as this session is a Public Hearing for the Board to gather information.

Bob Kane also encouraged the Madison County Planning Commission to vote down on tonight's proposal should the Madison County Board of Supervisors fail to do so.

Janet McBrien of Brightwood was present and stated that she is a hobby breeder and stated she is a very responsible dog owner; she abides by the breeder's code of ethics, takes care of her dogs and monitors them; she feels the County's only rule concerning dogs in Madison County has been to have them licensed and administered rabies vaccinations; however, dogs are allowed to run free and the imposition of special exclusions regarding perimeters/boundaries is a discriminatory act against those individuals who are responsible for their dogs; therefore, she suggested the County differentiate between animal control issues and tonight's proposal.

Bill Sanford of Forrest Drive was present and stated that he has had English Setters since childhood; he breeds them occasionally and believes tonight's concern is as much a property rights issue as it is an animal control issue; he doesn't feel tonight's issue is about the County creating another tax revenue by way of requiring special use permits; he feels the government has intruded enough in the lives of the

American people as it is and he doesn't feel this needs to go any further; however, he feels of the owners of the dogs who are creating the problem cannot be held accountable by animal control, then the County should assess actions of animal control personnel.

Leri Thomas of Laurel Drive was present and thanked all who did not vote for her when she ran for the Madison County Board of Supervisors, as she likes it better on "this side." She stated she had a heated discussion with one of the Board members and a comment was made to the effect that "without a change in the Ordinance, the County can't do anything about the current situation." She feels tonight's issue originated from a feud between two (2) individuals and has been going on for quite some time and it doesn't belong here; she also feels if people can't get a conviction, that does not mean that laws need to be changed so that a conviction can be attained; she also feels this feud doesn't necessitate a change in the existing law as it will effect everyone. Also, she wanted to clarify the County is requesting a special use permit be attained in agricultural and conservation districts, however, both the aforementioned districts are for farming which includes 'raising animals' – therefore, she submitted to the Board there are more working dogs in Madison County than there are working horses so if a special use permit is to be required for a kennel, then perhaps the same should be in order for those who raise horses also. In addition, she stated if she had a sick cow, she would call a veterinarian and the same for a sick dog or cat – all of these are animals and in agriculture/conservation zones this is done (supposedly) by right (by constitutional amendment); she stated that raising dogs/cats may seem different than raising chickens, sheep, ferrets, minks and other livestock although it isn't different and therefore, she asked the Madison County Planning Commission to address making raising dogs/cats a 'use by right' in an agriculture or conservation district because all have a right to farm and to sell the products that are offered and this should not require a special use permit. In closing, she commented on an individual who has moved into a conservation district and is having difficulty with dogs but does not wish to farm in the area; therefore, she asked if that individual who would need a special use permit and not the other way around.

Kim Smith of Brightwood was present and stated she was intrigued by the change – she comes from an area where if someone has three (3) dogs and/or four (4) cats

a kennel permit must be attained; she stated that all her animals are neutered and their animals are housed in electronic fences; she feels tonight's forum is the wrong forum in which to handle a problem of tonight's magnitude as this isn't a land use issue, but an issue of property rights and the right to quiet enjoyment of ones' property and she suggested the County talk with some of the responsible breeders and those who control the animals. She stated that she lives on fifteen (15) acres with dogs, cats, ferret and sometimes neighborhood dogs come through her doggy door, which doesn't bother her; however, if a dog approached her in an aggressive manner, she would see the visit much differently. In closing, she suggested the Board revisit the issue and respect the views of those breeders who are responsible for their animals in breeding and their wanderings.

Phil Hawkins of Reva was present and stated in looking at tonight's proposal, he feels that about ninety percent (90%) of the people present tonight raise dogs and probably sell puppies and wonders what these changes will bring as most people are well vested (in this hobby) and how they will be effected if a special use permit is required; he suggested tonight's proposal be done away with as he is an 'old timer' and would like to see things stay as they were in the past.

Delino Kreis of Courthouse Mountain Road was present and stated the citizens understand the importance of hunting and fishing to Madison County – many people who value conservation are natural allies of hunters and do not fence properties but provide wildlife corridors, give special permission for hunters to cross our land and allow fishermen stream access; she stated that agriculture and conservation are well linked and who is to determine which is more important.

Milton Oliver of Rochelle was present and feels he is misunderstanding tonight's request and stated he has Beagles; he stated some individuals breed on occasion and might only sell one (1) puppy and he doesn't feel it should be right for this person to fall under the guidelines being proposed tonight.

James Jarrell of Wolftown was present and stated he is representing the Bear Hunters Association and doesn't feel that a special use permit should be required as Madison County is a farm and hunting area – there is no special use permit required for those who raise hogs or cattle.



Jake Boucher of West Hoover Road was present and stated he has been hunting with dogs for most of his life (along with his Grandfather); he stated he loves the adventure and they have also raised puppies and some have been sold whereas others were just given away; however, there was never any money made as it costs far more to raise dogs and hunt them than what you will ever gain in selling them; he stated that having puppies isn't done for the purpose of making money as what takes place with a commercial kennel, but rather using them for hunting purposes....."I will die before I give up my dogs and that's how I feel about it."

Adie Simons of Brightwood was present and stated she breed Chihuahuas (while in Ohio) and stated if a special use permit is required, there will also be a requirement for a sanitation permit (from the Madison Health Department) and she asked what's the difference between "poop" (dog, goat, sheep, cow, pig) – she feels there is nit-picking with this issue; she stated she has sold puppies to older women and this made them happy; therefore, she feels it's silly to take away the citizens' right to make others happy.

David Kennedy of Leon was present and stated he feels "the County gets enough of our money....I think ya'll ain't nothing but crooks."

Bonnie Dixon returned to the podium and stated that nothing will be done if anyone sells one hundred puppies as she has seen this done by her neighbor many times and nobody will approach you in Madison County about doing this; unfortunately, she stated she is forcing tonight's issue because she has too....she cannot move as nobody would want to live next to what she resides next to. Also, she stated the stream is a stocked trout stream and the dogs (from Thunder Ridge Kennel) are polluting the stream on a daily basis and there is a difference between herbivore excrement and carnivores – humans are required so have some sort of system in place to take care of this issue.

Doug Holbrook of Casey Lane was present and stated he feels tonight's case is about somebody having been bitten by a dog – he stated he has never been bitten at a breeder's home; therefore, he doesn't see where tonight's proposal will resolve an issue where someone is bitten; if there is a problem with a kennel, then that should be dealt with accordingly; he stated he raises English Painters [German short-hairs] and they have never bitten anyone in the past.

Reinhold Pfaff, Veterinarian (in Madison County) was present and stated he doesn't know exactly what is being done tonight, but feels the issue is one of a legal nature and does not pertain to zoning.

Mary Durham of Aroda was present and if the County places restrictions on hunters being in the river, the County will see all the hunters and dog owners come forth who are not involved with breeding.

With no further comments, Chairman, Eddie Dean closed the Public Hearing on tonight's Kennel Ordinance.

Chairman, Eddie Dean then recessed the Madison County Board of Supervisors meeting and turned the meeting over to Rodney Lillard, Chairman of the Madison County Planning Commission.

The members of the Madison County Planning Commission verbalized concerns regarding tonight's issue and it was also suggested that a number be attached as to how many female dogs can be housed in a kennel

After much discussion, the Madison County Planning Commission recommended to the Board of Supervisors not make any changes tonight in the current definition of kennel. The Commission discussed revisiting this issue at a later time within their current sub-committees.

Pete J. Elliott stated that he was in agreement with one of tonight's speakers, in that he feels tonight's issue will impact many people in Madison County because there are one or two problems; therefore, he stated he cannot support any changes to the County's Zoning Ordinance with reference to kennels.

**ORDINANCE TO AMEND THE DEFINITION OF KENNEL  
IN ARTICLE 20-104 OF THE MADISON COUNTY  
ZONING ORDINANCE  
Ordinance #2010-2**

WHEREAS, the Board of Supervisors of Madison County, Virginia, finds that the following amendment to the Zoning Ordinance of Madison County, Virginia, would promote the health, safety and general welfare of Madison County, Virginia, and be in accord with the declarations of legislative intent set forth in Virginia Code Section 15.2-2200 (1950, as amended) and the Madison County Comprehensive Plan adopted on December 14, 2006;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Madison County, Virginia, that the definition of kennel in Article 20-104 of the Zoning Ordinance of Madison County, Virginia, is hereby amended as follows:

20-104 Kennel: A place designed or prepared to house, brood, breed, handle or otherwise keep or care for dogs or cats for sale or in return for compensation. ~~Home litters kept less than 6 months are not included.~~

The aforesaid amendment shall be effective upon enactment.

On motion of Pete J. Elliott, seconded by James L. Arrington, the Board voted to reinstate the current definition of “a Kennel” as it is written in the Madison County Zoning Ordinance, effective March 3, 2010.

	Aye	Nay	Abstain	Absent
Eddie Dean	<u>  x  </u>	_____	_____	_____
James L. Arrington	<u>  x  </u>	_____	_____	_____
J. Dave Allen	<u>  x  </u>	_____	_____	_____
Jerry J. Butler	<u>  x  </u>	_____	_____	_____
Pete J. Elliott	<u>  x  </u>	_____	_____	_____

After discussion, on motion of Pete J. Elliott, seconded by James L. Arrington, the Board voted to leave the Madison County Zoning Ordinance (Definition of a Kennel in Article 20-104) as it is currently denoted.

Jerry J. Butler stated it is his opinion that as the County’s Zoning Ordinance (Definition of a Kennel in Article 20-104) as it stands is probably the best option for Madison County – if the County can define what a “commercial kennel” is, this will be up to the Madison County Planning Commission and Zoning Administrator, but would be best to remain as it is.

James L. Arrington also concurred with the aforementioned statement that denoted tonight’s issue is an animal control problem and not necessarily a land use problem; therefore, he will second the motion as previously verbalized by Pete J. Elliott. With the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
J. Dave Allen	Aye
Jerry J. Butler	Aye
Pete J. Elliott	Aye

Chairman, Eddie Dean stated the Board has a memorandum from V. R. Shackelford, III, County Attorney, and Lisa Robertson, County Administrator, that deals with information about the Steps for the Implementation of a Transient Occupancy Tax for Madison County, Virginia, and suggested the Board discuss this issue at the March Regular Meeting.

Jerry J. Butler stated he was hopeful that more individuals who would be affected would be present should the Board approve the proposed Ordinance.

Chairman, Eddie Dean advised the Board cannot adopt an Ordinance during the upcoming Regular Meeting, as there is a specified time frame involved before an Ordinance can be adopted following a Public Hearing; therefore, individuals will still have an opportunity to express their views.

V. R. Shackelford, III, County Attorney, advised if the proposed Ordinance is approved, it can be done when the budget process is approved; the Public Hearing was done at this time to provide the Board with information on this issue.

With no further action being required by the Board, on motion of Pete J. Elliott, seconded by Jerry J. Butler, Chairman, Eddie Dean adjourned the meeting, with the following vote recorded:

Eddie Dean	Aye
James L. Arrington	Aye
J. Dave Allen	Aye
Jerry J. Butler	Aye
Pete J. Elliott	Aye

Date: March 4, 2010